

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**MARISSA PENA,
Plaintiff,**

vs.

**M&M CUSTOM HARVESTING,
ELWIN MORIARTY, and MARKO
CLARK,
Defendants.**

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CIVIL ACTION NO. 4:15-cv-585

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW, M&M CUSTOM HARVESTING, ELWIN MORIARTY, and MARKO CLARK, Defendants in the above-entitled and numbered civil action (hereinafter referred to as "Defendants"), and would respectfully show the Court as follows:

1. Defendants are parties in the above-entitled action now pending in the 266th Judicial District Court of Erath County, Texas, Cause No. CV33381.

2. Marissa Pena (hereinafter "Plaintiff") filed her Original Petition on June 24, 2015. Defendant M&M Custom Harvesting was served with process in this matter on or about July 9, 2015. Defendant Elwin Moriarty was served with process in this matter on or about July 16, 2015. Defendant Marko Clark was served with process in this matter on or about July 16, 2015. This Notice of Removal is filed within thirty (30) days of Defendants' receipt of the Petition and is therefore timely filed pursuant to 28 U.S.C. § 1446(b).

3. Removal of this action is proper under 28 U.S.C. §§ 1332(a) and 1441(a) because complete diversity of citizenship exists as among the named parties and because the amount in controversy exceeds \$75,000.00.

4. In Plaintiff's Original Petition, Plaintiff Marissa Pena, who is a citizen and resident of the State of Texas, alleges she was involved in a motor vehicle collision with Defendant Marko Clark, a citizen and resident of the State of Oklahoma, who was employed by M&M Custom Harvesting, a corporation with its principal place of business in the State of Nebraska. Defendant Edwin Moriarty, also a citizen and resident of the State of Nebraska, is the owner of Defendant M&M Custom Harvesting. On June 24, 2015, Plaintiff filed suit against the Defendants bringing state law tort claims for negligence and vicarious liability, alleging damages in excess of \$200,000.00.

5. At the time Plaintiff filed her state court action, Defendant M&M Custom Harvesting had its principal place of business in the State of Nebraska. Likewise, at the time of the filing of this Notice of Removal, Defendant M&M Custom Harvesting continues to maintain its principal place of business in the State of Nebraska.

6. At the time Plaintiff filed her state court action, Defendant Elwin Moriarty was a citizen of the State of Nebraska with a fixed residence located in Webster County, Nebraska. Likewise, at the time of the filing of this Notice of Removal, Defendant Elwin Moriarty remains a citizen of the State of Nebraska with the same fixed residence in Webster County, Nebraska.

7. At the time Plaintiff filed her state court action, Defendant Marko Clark was a citizen of the State of Oklahoma with a fixed residence located in Tulsa County, Oklahoma. Likewise, at the time of the filing of this Notice of Removal, Defendant Marko Clark remains a citizen of the State of Oklahoma with the same fixed residence in Tulsa County, Oklahoma.

8. The District Courts of the United States have diversity jurisdiction when there is complete diversity among the parties and when the amount of controversy exceeds \$75,000. 28 U.S.C. § 1332. Because there is complete diversity of a citizenship, and the amount in

controversy exceeds \$75,000.00, this case may properly be removed to this Court pursuant to 28 U.S.C. § 1441(a).

8. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders filed in the state court are attached hereto as Exhibit “A.”

9. This matter involves an amount in controversy exceeding \$75,000.

10. Pursuant to 28 U.S.C. § 1446(d), Defendants have given written notice of filing of this Notice of Removal to Plaintiff, and are filing a copy of this Notice of Removal with the Clerk of the 266th Judicial District Court of Erath County, Texas.

WHEREFORE, PREMISES CONSIDERED, Defendants M&M CUSTOM HARVESTING, ELWIN MORIARTY, and MARKO CLARK pray that the above-mentioned civil action now pending against Defendants in the 266th Judicial District Court of Erath County, Texas be removed to the United States District Court for the Northern District of Texas, Fort Worth Division.

Respectfully submitted,

/s/ D. Randall Montgomery

D. RANDALL MONTGOMERY

State Bar No. 14289700

Rmontgomery@drmlawyers.com

MICHAEL JUSTUS

State Bar No. 24002384

mjustus@drmlawyers.com

D. RANDALL MONTGOMERY

& ASSOCIATES, P.L.L.C.

12400 Coit Road, Suite 560

Dallas, Texas 75251

(214) 292-2600

(469) 568-9323 (Facsimile)

ATTORNEYS FOR DEFENDANTS

M&M CUSTOM HARVESTING, ELWIN

MORIARTY, and MARKO CLARK

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument has been served upon all attorneys of record in accordance with the Federal Rules of Civil Procedure on this the 4th day of August, 2015.

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Julie Castillo

Law Office of Julie Castillo

1148 East Commerce Street

San Antonio, Texas 78205

/s/ D. Randall Montgomery

D. RANDALL MONTGOMERY